

Remarks

The application was filed with claims 1-12. Claims 7-11 have been withdrawn without prejudice. Claims 1-6, and 12 have been examined and are pending. Claims 1-6, and 12 are rejected. All rejections are traversed.

Claim 1 is amended to include elements of cancelled claim 2-4 and 6, and claim 12 is amended to correct Markush groupings separate by -and-. None of the amendments are made to change the scope of what is claimed. No new matter has been introduced into the claims. All of the elements in the claims were present in application as filed. No new elements have been introduced. Therefore, a new search is not required. The traversal argument presented in the response filed October 15, 2002 are incorporate herein in their entirety by reference.

In paragraph 1, the Examiner makes the restriction on non-elected claims final.

In paragraphs 2-3, the Examiner rejected claims 1-6, and 12 under 35 U.S.C. 112, second paragraph.

With respect to claim 1, what is claimed is “a carbonific material,” “a heat activated blowing agent, … and a heat activated halogen material which forms a fire extinguishing halogen gas under heat.”

Those of ordinary skill in the art would understand that any compound that includes the element carbon, e.g., *all* organic compounds, that breaks down under extreme heat will function, in part, as a carbonific, this is an unavoidable fact of chemistry, but not a basis for rejecting a claim as being indefinite. Chemists would understand this known secondary reaction, and this is so explained in the specification. However, the unpreventable secondary reaction is not claimed.

Similarly, any compound that includes the elements hydrogen and oxygen, under heat can produce as an intermediate product water (H_2O), which will subsequently vaporize and function, in part, during a secondary reaction as a blowing agent. This reaction is explained in the specification. However, the secondary reaction is not claimed.

The Examiner's comments suggest a rejection on the basis of being indefinite, any intumescent power that has more than one constituent part including carbon, and more than one constituent part containing hydrogen and oxygen, other common elements, because those parts would have "overlapping functions."

Examiner's rejection would have to reject most intumescent compounds, for example, carbon dioxide and paraffin, merely because these contains carbon, which would contribute to the carbonific char layer, and any alcohol or ethol based parts because they contain hydrogen and oxygen, which would contribute to the blowing agent.

For that matter, the Applicants are hard pressed to come up with any material which *does not* turn to a gas when heated by exposure to open flame or high radiant heat, and therefore “acts” like a blowing agent or a gas. Natural physics demands that solids turn to gas when heated, and that various components overlap each other in function. It is well known that any material, under the appropriate temperate and pressure conditions, can be either a solid, a liquid, or a gas, or combinations thereof.

The Examiner provides no evidence that a halogen is a carbon. The fact that it can “act” as a carbonic does not mean that it is. Nowhere, does the application or claims state that “the heat activated blowing agent can act as a carbonic material,” quoting the Examiner, in contrast, see at page 7, lines 8-14 *“Blowing Agent - The blowing agent is primarily comprised of melamine. Heat decomposition of the melamine produces ammonia, urea, water, carbon dioxide, etc. These gases act to expand the volume of the resin during combustion. The gases help produce a multicellular foamy resin which insulates and protects the resin and structure from additional heat.”*

Furthermore, this paragraph makes it quite definite that the function of the blowing gas is to foam and provide insulation from heat. In any case, the rejection is moot with the incorporation of claims 2-4 in claim 1 to make the claimed elements more definite.

Claims 1 has been amended to correct “23.5-29.5”, and the Markush claim construction in claim 12 is correct, as well the number “17.0”.

In paragraphs 10-11, the Examiner rejected claims 1-6, and 12 under 35 U.S.C. 103(a) as being unpatentable over Vajs et al. and Wortmann et al. (U.S. Patent 4,743,625 and 4,166,743 - “Vajs” and “Wortmann”).

The Examiner admits that Vajs and Wortmann are different from the claimed invention. Moreover, the claimed invention differs in a way that produces unexpected results, see bottom of page 11.

Moreover, the invented compound has unexpected results. The flame spread ratio of the invented material is **less than half** that of prior art compounds, as tested to the ASTM E-162 Surface Flammability Test. The amount of smoke is an amazing **1/100th**, as tested to the ASTM E-662 Smoke Density Test, and as for a physiologically toxic, the claimed intumescent produces **none**. Note, any toxic gas constituents are below the reporting limit as recognized by the U.S. Passenger Rail Requirement when tested to the BSS 7239 Toxic Gas Analysis – a generally accepted Boeing Aircraft Standard. These unexpected results attached.

The toxicity levels prior art Vajs and Wortmann compounds are potentially high. Both Vajs and Wortmann cite the use of dicyandiamide as an expanding agent. Dicyandiamide is the incorrect name for the dimer of cyanamide. Cyanamide is a cyanide (CN) compound and upon a combustion decomposition toxic vapors of cyanide and cyanide compounds such as hydrocyanic acid (HCN) can be emitted.

The patent Vajs is 24 years old and Wortmann is 15 years old, at that time the use of those toxic compounds was common. However, the acceptable toxicity levels have been reduced considerably since then. For example, upon combustion, new maximum environment toxicity test protocols, such as the Boeing Standard BSS 7239, have a requirement limit of less than 150 ppm of HCN for materials that can be used for U.S. passenger vehicles for interior use. It is unlikely either patented material could pass this universally employed protocol with the Vajs loading his mixture with 17 to 27 parts, and with Wortmann loading coating with as much as 25 parts of these toxic compounds in their compositions.

The physiological effects of exposure to heat in fires and/or the resultant toxic smoke on the compounds of Vajs and Wortmann can result in varying degrees of incapacitation, permanent injury or death. Visual obscuration and painful irritation of the eyes can impair or reduce the efficiency of egress due to psychological and/or physiological effects. Breathing difficulties, lung inflammation, narcosis and respiratory tract injury, are physiological hazards potentially present in fire scenarios. Narcotic gases, e.g., carbon monoxide, hydrogen cyanide and reduced oxygen, can affect the nervous and cardiovascular systems, causing confusion, a period of intoxication, followed by a collapse and loss of consciousness, followed ultimately by death from asphyxiation.

Those of ordinary skill would appreciate that any compound with **zero reportable** toxicity is extremely significant and desirable. The Examiner has not provided any prior art reference with results that are in any way similar to

those of the invention. The unique mixture of the invention achieve both flame retardance and unexpected low levels of toxicity.

Vajs at column 4, line 48 and column 5, section 7, discusses a vitrifying material or agent. The Examiner goes on to equate the Vajs vitrifying material to the claimed cement-like inorganic binder. Those of ordinary skill in the art would never confuse cement with glass. A brittle glass can clearly be distinguishable from the hard cementitious inorganic binder such as claimed.

The definition of *vitrify*: “To change or make into glass or a similar substance, especially through heat fusion.” It comes from the Latin vitrum - glass and facere - to make. In the strict sense, glass is a state of inorganic matter that is noncrystalline and amorphous.

The Vajs patent in column 5, Section 7, describes: a vitrifying agent which locks the intumescent protective layer ... by vitrifying and when exposed to a temperature. Section 8 specifies the vitrifying, glass forming candidate chemicals specifically. However, borates and silicates of Vajs typically melt together, at relatively low temperatures, between 300 and 350° C. to form brittle, fragile matrices. The fragile matrices produced by Vajs' mixture adds **no** structural integrity to the char layer profile.

Vajs does not contain a cementitious inorganic binder, e.g., calcium aluminate cement, which reacts with water, to form a typical hydrolic cement

to add structural integrity to the char layer profile. The strong integral cementitious binder is distinguished from the brittle vitrious binder of Vajs.

Applicants respectfully request which parts at column 4, lines at lines 43-50, “Suitable additives to be added to a product comprise by weight: 7 to 40 parts of ammonium or diammonium phosphate; 17 to 37 parts of pentaerythritol; 17 to 27 parts of dicyandiamide; and 5 to 50 parts of a suitable **vitrifying** material. In addition, 5 to 50 parts of chlorinated paraffin may be added,” cited by the Examiner, are believed to be the claimed “*the inorganic binder comprises calcium aluminate.*”

The Examiner’s equating of the Vajs vitrifying material to the claimed cementitious martial is strictly incorrect. A glass is not a cement.

In order to understand the chemistry that lies behind the claimed invention, the following is provided.

The material constituent recipe of the claimed novel inorganic binder system, working in conjunction with the claimed intumescent chemical powders, is the crux of the uniqueness of the present invention.

When a resin is blended with the claimed fire retarding and smoke suppressing powder, the resin mixture elutes upon the particulate constituents during the mixing phase. The constituents are held within the finished plastic substrate by an encapsulating mechanical bond. As would be apparent to one of ordinary skill in the art, this reaction is not possible with the prior art compositions, particularly, those that contain brittle vitrifying materials.

Upon exposure to heat, the unique, unexpected, and nonobvious result of the invention is as follows.

As the plastic substrate of the finished product attempts to combust in the presence of high radiant heat or an open flame, the phosphorus-containing constituent decomposes at the start of the pyrolyzing process releasing a strong acid by-product. This phosphoric acid that is formed dehydrates the pyrolyzing polymer resin and reacts with the alcohol dipentaerythritol carbonific to form initiator-based esters. This series of reactions and decompositions catalyzes the formation of water and expedites the formation of a cementitious char layer. Halogen gases are also formed and liberated from the chlorinated paraffins.

The blowing agent decomposes yielding large volumes of non-flammable gases and additional char. The hydration, e.g., addition of water, of calcium aluminate cement of the invention is strongly dependent on temperature. The elevated temperature environment hydrolyzes calcium aluminate cement in the presence of the water, i.e., water vapor is produced in the cement-like char-forming layer. This breakdown is an exothermic reaction through an anhydrous phase.

The hydrolyzed calcium aluminate cement proceeds through a dissolution and precipitation reaction to form a **hardened cementitious structural matrix**, unobtainable by either Vajs or Wortmann, alone or in combination. This adhesive cement structure stays **intact**, and in contrast with the prior art, **remains stable** during extremely high temperatures, supporting the

insulating char layer formed by the intumescence additives in concert with the plastic soot, i.e., chiefly carbon produced by the incomplete combustion of the plastic polymer.

After the reaction cycle is complete, the carbonaceous material, supported by the cementitious barrier structure prevents even higher temperatures and high velocity pressure gradients from penetrating the underlying laminate sub-structure. This is a highly desirable effect not possible with the **brittle prior art vitrified** materials.

Note, this is **not** a typical Portland cement reaction that has a long “gel phase to cure.” Instead, the water and calcium aluminate cement dissolution precipitation reaction occurs very rapidly at elevated temperatures, i.e., elevated kinetics. Neither Vajs nor Wortmann, alone or in combination can ever achieve this unexpected high speed reaction due to the unique combination claimed by the invention, and its unexpected results. The hydrates and structure formed between the reaction of calcium aluminate cement in concert with the water vapor of the intumescence constituents is indeed unexpected, resulting in a unique ability to protect plastic upon exposure to open flame and high radiant heat.

There is no foundation for the Examiner’s statement that, for the claimed invention, workable ranges can be determined by routine experimentation. To the contrary, those of ordinary skill in the art of designing intumescence compositions know that “the development of additives for use with resins remains a highly empirical art. The predictability of the behavior of the final

composition is rare to non-existent, see present Application at page 4, lines 6-7.

In contrast, the chemistry of Vajs works as follows. When exposed to high radiant heat or open flame, the ammonium polyphosphate decomposes to form phosphoric acid, which lowers the reaction temperature for the conversion of the pentaerythritol to char and water. Some gases are released by the dicyandiamide. The vitrifying material reflects some IR, until it melts into a **useless glassy film**. As the temperature increases, this film melts and loses stability.

The end result is nothing but a **brittle, fragile carbonaceous deposition**, which is **inconsistent and non-compliant** with current fire safety engineering and fire sciences requirements.

The chemistry of Wortmann's coating produces a fire retardant package dispersed into a film-forming carrier "agent" with the option of including fillers to modify the paint-like coating mix. Wortmann employs the same acid former and char formation mechanism as described by Vajs, thus, the same disastrous results.

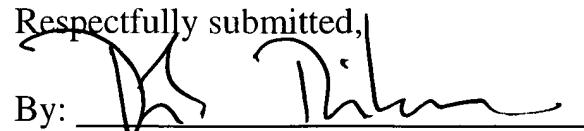
Wortmann includes a salt, containing significant quantities of bound water that is supposed to be liberated in the fire insult scenario. The theory with the bound water salt complex is to cool the insulted coating surface at the start of the fire insult exposure, while the intumescent stepwise reaction takes place. After the char forms, only this fragile char and small quantities of residual

bound water from the salt complex are relied upon to take on higher velocity flame fronts.

However, higher radiant heat gradients, water impact from high pressure hoses and sprinklers, and the possibility the greater fire-affected environment in all likelihood will re-ignite the composition, requiring the need for continued fire protection.

The end result of combining Vajs and Wortmann is a material unsuited for today's prescriptive fire and life safety codes and regulatory requirements.

All rejections have been complied with, and applicant respectfully submits that the application is now in condition for allowance. The applicant urges the Examiner to contact the applicant's attorney at phone and address indicated below if assistance is required to move the present application to allowance.

Respectfully submitted,

By: _____
Dirk Brinkman
Reg. No. 35,460
Telephone: (617) 621-7539

Correspondence
Mr. John B. Herring
Avtec Industries
9 Kane Industrial Drive
Hudson, Ma. 01749
(978) 562-2300